

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

KWAITEL JACKSON

PLAINTIFF

VS.

CAUSE NO. 4:18CV181-SA-JMV

**CITY OF LELAND, LELAND POLICE DEPARTMENT;
MAYOR KENNY THOMAS, Individually and in his Official
Capacity; CHIEF BILLY BARBER, Individually and in his
Official Capacity; OFFICER COREY WEATHERSPOON,
Individually and in his Official Capacity, and DEFENDANTS
ROBERT L. COMBS, in his Individual and Official Capacity,
and KAYLAN M. JAMES, in his Individual and Official Capacity DEFENDANTS**

**AUTHORITIES SUPPORTING DISMISSAL OF FEDERAL CLAIMS
AND/OR JUDGMENT ON THE PLEADINGS**

NOW COME Defendants, City of Leland, Leland Police Department, Mayor Kenny Thomas, Individually and in his Official Capacity, and Chief Billy Barber, Individually and in his Official Capacity, by and through counsel, and respectfully move this Court for a finding of dismissal and/or judgment on the pleadings as to claims arising under federal law, to-wit:

1) PREMISE: This is a time-barred state court lawsuit where the Plaintiff responded 2 days prior to the scheduled hearing with an amendment attempting to raise a federal question. See Discussion Per Order at [Doc. 26].

2) STATEMENT REGARDING OMITTED PERSONS AND CLAIMS: By amended complaint, Plaintiff has deleted the City of Leland Police Department (a non-entity under state or federal law) and claims against Mayor Kenny Thomas in his individual and official capacities and Chief Billy Barber in his individual capacity. The amended complaint maintains a duplicate official capacity claim as to Chief Barber. Since official capacity claims are actually claims against the City,

those are fully and completely answered herein by the City. If not waived herein, dismissal of the duplicate official claims against Chief Barber, Mayor Thomas, and the Leland Police Department would be warranted under established precedent. *Estate of Manus v. Webster County*, 2014 U.S. Dist. LEXIS 43536, Pages 7-8 (N.D. Miss. Mar. 31, 2014). In accordance with the Court's Order of April 30, 2019, @ [Doc. 26], an order striking any reference to either the Leland Police Department, Chief Billy Barber, or Mayor Kenny Thomas and directing that they hereafter be listed as terminated on the docket of this case is requested pursuant to Fed. R. Civ. P. 12(e).

3) THOMAS AND BARBER are no longer sued individually. In reliance upon the averments of Plaintiff's First Amended Complaint and the Court's Order of April 30, 2019, @ [Doc. 26], no responsive pleading or prayer for qualified immunity is needed at this point. However, the right to qualified immunity is respectfully reserved.

4) STANDARD: The standard for addressing a motion for judgment on the pleadings under Rule 12(c) is the same as that for addressing a motion to dismiss under Rule 12(b)(6). *In re Great Lakes Dredge & Dock Co.*, 624 F.3d 201, 209–10 (5th Cir. 2010). Thus, to survive moving Defendant's Motion, Plaintiff's Complaint must provide the grounds for entitlement to relief—including factual allegations that when assumed to be true “raise a right to relief above the speculative level.” *Cuvillier v. Sullivan*, 503 F.3d 397, 401 (5th Cir. 2007)(quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 553-56 (2007)). The Complaint must allege “sufficient factual matter...to state a claim that is plausible on its face.” *Id.* at 570. “A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 556. A court should not accept “threadbare recitals of a cause of action's elements, supported by mere conclusory statements,” which “do not permit the

court to infer more than the mere possibility of misconduct.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949-50 (2009).

NOW, THEREFORE, these Defendants respectfully move this Court that in accordance with the Order of April 30, 2019, @ [Doc. 26], the Leland Police Department, Chief Billie Barber, and Mayor Kenny Thomas hereafter be listed as terminated on the docket of this case pursuant to Fed. R. Civ. P. 12(e) with the instant Complaint dismissed as to them.

RESPECTFULLY SUBMITTED this the 28th day of May, 2019.

JACKS GRIFFITH LUCIANO, P.A.

By: /s/ **Daniel J. Griffith**

Daniel J. Griffith, MS Bar No. 8366
Attorney for Defendants City of Leland, Leland Police
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CERTIFICATE OF SERVICE

I, Daniel J. Griffith, counsel for Defendants, in the above case, do hereby certify that I have this day caused a true and correct copy of the above and foregoing *Authorities Supporting Motion to Dismiss Federal Claims Pursuant to Rules 12(b)(c) Fed. R. Civ. Proc* to be delivered via ECF filing to all counsel of record.

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FILED this 28th day of May, 2019.

/s/ **Daniel J. Griffith**
Daniel J. Griffith